

## **BANK DEPOSITORY AGREEMENT**

This Bank Depository Agreement (this "Agreement"), is made and entered into effective, May , 2021 (the "Effective Date"), by and between Wise County ("Depositor") and First Financial Bank, N.A., a national association organized under the laws of the United States and authorized to do banking business in the state of Texas ("Bank").

NOW, THEREFORE, for a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

### **1. Appointment of Depository and Term.**

Depositor designates Bank as a depository for the period beginning May 17, 2021 and continuing until this Agreement has been canceled in accordance with the provisions hereof, for certain accounts established by Depositor with Bank. The term of this Agreement (the "Term") shall be 4 years as defined in Depositor's Request for Proposal dated March 4, 2021 (the "RFP"), unless the parties mutually agree to an extension of the Term of this Agreement, if such extension is allowed by applicable law. If the parties agree to such an extension of the Term, then the parties shall either execute an addendum to this Agreement or other written evidence stating that the parties have agreed to an extension, the statutory or other legal authority for such extension and the date upon which such extension of the Term expires.

During the Term of this Agreement, Depositor will, through appropriate action of its governing body, designate the officer or officers who, individually or jointly, will be authorized to represent and act on behalf of Depositor in any and all matters of every kind arising under this Agreement.

### **2. Establishment of Accounts.**

Depositor shall deposit such of its funds as it may choose with Bank, and Bank shall receive such deposits as interest or non-interest bearing demand deposit accounts, limited transaction accounts, and/or time deposit accounts, as designated by Depositor. Each account type is subject to payment in accordance with Bank's terms and conditions for such account type unless varied by an agreement with Depositor.

### **3. Depository Services; Depositor Records; Fees.**

Subject to the particular terms and conditions of the account type chosen, Bank shall pay to the order of Depositor upon proper presentation of checks, drafts or vouchers lawfully drawn, all or any portion of the available funds of Depositor on deposit with Bank.

Bank statements, check images, deposit slips, debit and credit notices, notices of interest earned, and any other related documentation, or images thereof, shall be retained by Bank for a period of 7 years after the date of receipt of the items. To the extent permitted by law, Bank shall make all records, books, and supporting documents, or images thereof, pertaining to services applicable to Depositor accounts and transactions pursuant to this Agreement available upon

reasonable notice at any reasonable time during the term of this Agreement, to Depositor and its designated representatives. To the extent permitted by law, Depositor shall have the right to receive copies of any of such documents.

To determine charges for services rendered, Bank may utilize an earnings credit rate on Bank's account analysis system, determined and calculated in a manner specified in Bank's proposal/offer. The Bank's account analysis system is used to calculate and account for all Bank-performed deposit and treasury management service charges. Bank will calculate Depositor's combined average daily collected balances less combined average daily Federal Reserve requirements, and using the earnings credit rate, number of days in the year, and number of days in the month calculate the earnings credit of Bank and use those earnings credit to offset the charges to Depositor of combined services rendered by Bank. In the event there is a charge for services, and the amount of charge for services is not offset by Depositor's earnings credit as described above, Bank will auto-debit Depositor's accounts on a monthly basis. Any interest paid on an account in account analysis that is also receiving earnings credit is considered an expense on the account analysis statement.

**4. Security of Funds; Acceptable Security; Appointment of Custodian; Increases in Collateral Amounts.**

All funds on deposit with Bank to the credit of Depositor shall be secured pursuant to Bank's Collateral Security Agreement or similar agreement (the "Security Agreement") and any agreement required by Custodian (defined below). In the event of any conflicts between the Security Agreement and this Agreement regarding provisions and topics addressed in both agreements, the provisions of the Security Agreement shall control.

Depositor and Bank, by execution of this Agreement, designate the custodial bank identified to Depositor by Bank (the "Custodial Bank") as "Custodian," to hold collateral in an account maintained by Custodian in the name of Bank and subject to the terms and conditions of this Agreement, the Security Agreement, and any agreement required by Custodian to document such relationship.

Depositor recognizes that the Federal Deposit Insurance Corporation (or its successor) (the "FDIC") provides insurance for Depositor's funds deposited at any one financial institution, including accrued interest on such funds, only up to maximum regulatory limits as set by the FDIC. All uninsured funds on deposit with Bank to the credit of Depositor shall be secured by collateral as provided for in the Texas Public Funds Collateral Act and in other applicable law (collectively, the "Acts"), and Depositor agrees and certifies that the securities listed in Exhibit A to the Security Agreement shall be eligible to be used as collateral to secure Depositor's funds on deposit with Bank consistent with Depositor's collateral policy as such policy has been varied by Depositor's approval and execution of this Agreement. The market value of the collateral securing Depositor's funds must at all times equal or exceed 102% of the daily ledger balance (amount of funds plus the amount of any accrued interest on the funds) of all Depositor's accounts, less the FDIC standard maximum deposit insurance amount ("SMDIA") (the "Collateral Requirement"). The market value with respect to any collateral as of any date and priced on such date will be obtained by Bank from a generally recognized pricing source.

When Depositor anticipates the need for collateral with Bank will increase on any given day or over a series of days, Depositor agrees to notify Bank of such anticipated increase at least 1 business day prior to the date the additional deposits are expected to be received.

**5. Delivery of Collateral to Custodian.**

Bank already has delivered, or will immediately after the Effective Date, identify or deliver to Custodian collateral of the kind and character above mentioned of sufficient market value to provide adequate collateral for the uninsured funds of Depositor deposited with Bank.

**6. Custodian Safekeeping Account.**

Bank shall cause Custodian to accept said collateral and hold the same in trust for the purposes stated in this Agreement, in a safekeeping account with Custodian to be managed pursuant to the Security Agreement, and the operating agreements, guidelines, and procedures as stated in this Agreement and pursuant to the terms of any separate agreement with Custodian.

**7. Duties and Liabilities of Custodian.**

It is distinctly understood by all the parties that Custodian shall not be required to ascertain the amount of funds on deposit by Depositor with Bank, nor the validity, authenticity, genuineness, or negotiability of the securities deposited with Custodian by Bank pursuant to this Agreement, and Custodian is not liable to anyone for performing in accordance with this Agreement, except for the safekeeping of securities delivered to Custodian, and for any gross negligence or willful misconduct of Custodian's own officers, agents, and employees.

**8. Right of Depositor Upon Bank's Breach of Duties Under Agreement or Bank's Insolvency.**

To the extent of the available funds of Depositor on deposit with Bank, should Bank fail at any time to pay immediately and satisfy upon proper presentation any check, draft or voucher lawfully drawn upon any demand deposit account, or fail at any time upon proper presentation or authorization to timely pay and satisfy, when due, any check, draft or voucher lawfully drawn against any other account type, or in case Bank becomes insolvent or in any other manner breaches its contract with Depositor, Depositor shall give written notice of such failure, insolvency or breach to Bank, and Bank shall have 10 business days to cure such failure, insolvency or breach. In the event Bank shall fail to cure such failure, insolvency or breach within 10 business days, Bank authorizes Depositor (supported by proper evidence of any of the above listed circumstances) to enforce its security interest and lien in the collateral securing Depositor's funds and to make demand on Custodian to surrender control of such collateral to Depositor. In such event, Depositor may sell, or direct Custodian to sell all or any part of such collateral, and out of the proceeds thereof pay Depositor all losses sustained by it, together with its reasonable expenses incurred as a direct result of such failure, insolvency or breach, accounting to Bank for the remainder, if any, of such proceeds or of the collateral remaining unsold.

**9. Collateral Substitutions by Bank.**

If Bank shall desire to sell or otherwise dispose of any of such collateral held by Custodian for the benefit of Depositor, it may, with or without prior approval of Depositor, substitute for any of such collateral other collateral of the same market value and of the character authorized in this Agreement, and such right of substitution shall remain in full force and be exercised by Bank as often as it may desire to sell or otherwise dispose of any such collateral; provided, however, that at all times, the aggregate amount of such collateral or substituted collateral held by Custodian for the benefit of Depositor shall always be such that it meets the Collateral Requirement. If at any time the aggregate amount of such collateral held by Custodian for the benefit of Depositor is less than the Collateral Requirement, then in that event, Bank shall immediately identify to or deposit with Custodian additional collateral as may be necessary to meet the Collateral Requirement.

Bank shall be entitled to income on collateral held by Custodian, and Custodian may dispose of such income as directed by Bank without approval of Depositor, to the extent such income is not needed to secure Depositor's deposits, and provided that retention of such income does not otherwise violate this Agreement.

**10. Trust Receipts For Collateral; Depositor's Right To Itemized List of Collateral.**

Bank shall promptly forward to Depositor trust receipts via regular mail, or other agreed upon electronic means, covering all such collateral held by Custodian for the benefit of Depositor, including collateral substituted in accordance with this Agreement. Bank shall also maintain records relating to all such collateral held for the benefit of Depositor. Upon written request of Depositor, Bank will produce an itemized list of collateral held as security for Depositor.

**11. Collateral Value In Excess of Collateral Requirement.**

If at any time the collateral held by Custodian for the benefit of Depositor has a market value in excess of the Collateral Requirement, then upon the written authorization of an authorized representative of Bank, confirmed by an authorized representative of Depositor, Bank may request withdrawal of such excess amount of collateral, Custodian shall deliver this amount of collateral (and no more) to Bank, and Custodian shall have no further liability for the collateral so redelivered to Bank.

All substitutions, releases, and additional pledges of collateral pursuant to the terms hereof and of the Security Agreement shall be completed at the earliest time as is commercially reasonable.

**12. Termination; Amendment of Agreement.**

Either Depositor or Bank shall have the right to terminate this Agreement prior to the expiration date by providing the other party with 90 days prior written notice of its election to terminate. This Agreement shall terminate 90 days after delivery of such written notice, provided that all provisions of this Agreement have been fulfilled.

In addition to any other remedy that Depositor may have at law or in equity, if Bank breaches this Agreement in any manner or defaults on its obligations hereunder and does not cure

such breach or default within 30 days of Bank receiving notice of such breach or default from Depositor, then after expiration of such 30 day cure period, Depositor may terminate this Agreement and withdraw its funds by giving Bank written notice of termination and withdrawal.

In the event that Depositor fails to comply with any of its promises in this Agreement, or if any of its representations are untrue or any of its warranties is breached, and Depositor does not cure such breach or default within 30 calendar days of Depositor receiving notice of such breach or default from Bank, then after expiration of such 30 calendar day cure period, Bank may terminate this Agreement by sending written notice to Depositor of Bank's decision to terminate. Upon receipt of such notice, Depositor shall make provisions for the immediate withdrawal of Depositor's funds from Bank.

This Agreement may be amended in a writing executed by both Depositor and Bank.

**13. Post-Termination/Expiration Obligations.**

When the relationship of Depositor and Bank shall have ceased to exist, and when Bank shall have properly paid out all deposits of Depositor, it shall be the duty of Depositor to give Bank an authorization to release the collateral, the form of which shall be reasonably acceptable to Bank and Custodian. Upon Bank's delivery of such authorization to Custodian, Custodian shall release to Bank all collateral then in its possession belonging to Bank to the extent held for the benefit of Depositor. Upon release of such collateral to Bank, as to such collateral, Custodian shall not have any further liability to Depositor or Bank, except for liability as set forth in Section 7 above, where such liability arose while the collateral was in Custodian's control.

**14. Representations and Warranties of the Parties.**

Bank represents and warrants that:

- (a) Bank is the sole legal and actual owner of the securities or of a beneficial interest in the securities utilized to collateralize deposits;
- (b) other than the security interest granted to Depositor herein, no other security interest has been, nor will be, granted in the securities utilized to collateralize deposits;
- (c) Bank accounts are insured to the regulatory limits of the FDIC;
- (d) this Agreement has been authorized by Bank's Board of Directors, and such authorization is evidenced by a resolution of Bank's Board of Directors adopted at a duly called meeting; and
- (e) this Agreement is an official record of Bank, and has been, and will continue to be, an official record of Bank from the date of its approval by Bank's Board of Directors.

Depositor represents, warrants and promises that:

- (a) Depositor has complied with all applicable law governing the selection of a depository bank, that Depositor has full power and authority to enter into this Agreement, this Agreement is a valid and binding agreement enforceable against

Depositor pursuant to its terms, and does not and will not violate any statute or regulation applicable to Depositor;

- (b) all acts, conditions, and things required to exist, happen, or to be performed on Depositor's part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed; and
- (c) Depositor will comply with the terms of the Security Agreement and any other agreements it may have with Bank in connection with this Agreement.

**15. Incorporation of Request For Proposal and Response; Conflicting Provisions.**

The RFP and Bank's response to the RFP (the "Response"), are incorporated into this Agreement by reference. In the event of any conflicts between the RFP and the Response, the provisions of the Response control. In the event of any conflicts between the Response and this Agreement regarding provisions and topics addressed in both documents, the provisions of this Agreement control. In the event of any provisions and topics addressed in the Response and not addressed in this Agreement, the Response controls.

**16. Liability of the Parties.**

Bank's and Depositor's duties and responsibilities to each other are limited as set forth in this Agreement, except with respect to any provisions of the law which cannot be varied or waived by agreement. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER BANK NOR DEPOSITOR WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS), OR FOR ANY INDIRECT LOSS THAT THE OTHER PARTY MAY INCUR OR SUFFER IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER (EVEN IF THE SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES.**

**17. Invalidity; Severability.**

If any clause or provision of this Agreement is for any reason held to be invalid, illegal, or unenforceable, such holding shall not affect the validity, legality, or enforceability of the remaining clauses or provisions of this Agreement.

**18. Governing Law; Venue.**

This Agreement shall be construed in accordance with the substantive laws of the State of Texas, without regard to conflicts of law principles thereof. Bank and Depositor consent to the non-exclusive jurisdiction of a state or federal court situated in Taylor County, Texas, in connection with any dispute arising from or relating to this Agreement. Bank and Depositor irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that such proceeding brought in such a court has been brought in an inconvenient forum.

**BANK AND DEPOSITOR EACH IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

**19. Notices.**

Any communication, notice, or demand to be given hereunder shall be duly given when delivered in writing or sent by facsimile to a party at its address indicated below.

If to Depositor:

Wise County  
200 N Trinity  
Decatur, Texas 76234

Facsimile No.:

If to Bank:

Executive Vice President, Treasury Management  
First Financial Bank, N.A.  
400 Pine Street  
Abilene, Texas 79601  
Facsimile No.: 325 627-7285

**20. Security Measures.**

Bank and Depositor agree to implement and follow commercially reasonable measures to protect the privacy and security of Depositor's transactions and information, including communications and information held by Depository or Bank, or transmitted between Depositor and Bank.

**21. Assignment and Binding Effect; Amendment.**

Depositor may not assign all or any part of its rights or obligations under this Agreement without Bank's prior express written consent, which may be withheld in Bank's sole discretion. Bank may assign or delegate all or any part of its rights or obligations under this Agreement, including, without limitation, the performance of the services described herein. This Agreement will be binding on and inure to the benefit of the successors and permitted assigns of either party.

**22. Third Party Service Providers.**

In the normal course of its business, Bank may engage third party vendors or subcontractors to provide or assist in providing all or part of certain services. Any third party vendor or subcontractor used by Bank is an independent contractor and not Bank's agent.

**23. Records, Reports and Audits.**

Bank shall maintain separate, accurate and complete records relating to Depositor's funds, the pledged securities and all transactions relating to the pledged securities. Bank will also take reasonable steps to ensure that Custodian shall maintain separate, accurate and complete records

relating to the pledged securities and all transactions relating to the pledged securities. Depositor and its representatives or agents shall have the right to examine and audit at any reasonable time upon 5 days prior written notice all records maintained pursuant to this Section 23.


**24. Captions; Counterparts and Signatures.**

Captions used in this Agreement are for convenience only and are not intended to limit or expand the meaning of any underlying provisions. This Agreement may be executed in counterparts and by use of signatures delivered by electronic means.

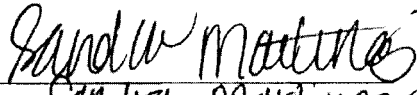
IN WITNESS WHEREOF, Bank and Depositor have caused this Agreement to be duly executed as of the Effective Date.

**First Financial Bank, N.A.**

ATTEST:


By:   
Name: Carley Dyck  
Title: SVP & COO

**"Bank"**

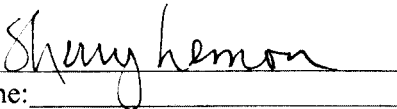
By:   
Name: Sandra Martinez  
Title: AVP

**Wise County**

ATTEST:

By:   
Name: J.D. Clark  
Title: County Judge

**"Depositor"**

By:   
Name: \_\_\_\_\_  
Title: Sherry Lemon  
Ex-Officio Clerk of Commissioners Court  
County Clerk, Wise County





# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2021-724640

Date Filed:  
03/08/2021

Date Acknowledged:

3-9-21

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

First Financial Bank  
Southlake, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Wise County, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

21-BID-014  
Depository Services

| 4 | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) |              |
|---|--------------------------|--|---------------------------------------|--------------|
|   |                          |  | Controlling                           | Intermediary |
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5 Check only if there is NO Interested Party.

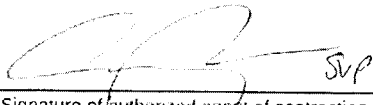
6 UNSWORN DECLARATION

My name is Carley Dyck and my date of birth is 02/19/86

My address is 151 W Southlake Blvd, Southlake TX 76092 Tarrant  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 8<sup>th</sup> day of March, 2021.  
(month) (year)

  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)